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Federal Communications Commission
Office of the Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)
)
Petition for Rulemaking to) RM-7913
Modify the Regulatory Treatment)
of COMSAT World Systems' Multi-)
Year Fixed-Price Carrier-to-)
Carrier Contract-Based Switched-)
Voice Services)

REPLY COMMENTS TO PETITION FOR RULEMAKING

Thomas J. Sugrue
Acting Assistant Secretary for
Communications and Information

Phyllis E. Hartsock
Acting Chief Counsel

Jean M. Prewitt
Associate Administrator
Gregg Daffner
Craig Moll
Office of International Affairs

Anne Moebes
Attorney

National Telecommunications
and Information Administration

U.S. Department of Commerce
Room 4713
14th and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 377-1816

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REPLY COMMENTS TO PETITION FOR RULEMAKING

The National Telecommunications and Information Administration ("NTIA"), as the Executive Branch agency principally responsible for the development and presentation of domestic and international telecommunications and information policy, hereby respectfully submits the following Reply Comments in support of the Petition for Rulemaking filed by COMSAT World Systems Division ("CWS").^{1/}

I. INTRODUCTION

CWS's Petition: CWS requests that the Federal Communications Commission ("Commission") initiate a rulemaking to modify its regulatory treatment of CWS's contract-based,

^{1/} Petition for Rulemaking of CWS, RM-7913 (filed Jan. 30, 1992) ("Petition").

switched-voice INTELSAT services ("CWS switched-voice services") to apply incentive, "price caps" regulation instead of traditional rate-of-return regulation.^{2/} Under CWS's proposed plan, these long-term, switched-voice services would remain subject to the Commission's Section 208 complaint process, but would be excluded from annual rate-of-return reviews. CWS requests that rates for these services be "capped" at the reduced levels that went into effect on January 1, 1992. CWS would be free to file lower rates for these services on fourteen days notice, and those rates would be prima facie lawful as long as they covered COMSAT's average variable costs.

CWS asserts that its proposal would be in the public interest because the benefits to consumers under "price caps" regulation are greater than under traditional rate-of-return regulation. According to CWS, these public interest benefits would include positive economic incentives to keep rates reasonable in the face of increasing costs.

2/ Under rate-of-return regulation, regulators must evaluate a firm's rate base and determine appropriate profit levels. In contrast, "price cap" regulation directly controls prices rather than profits. This approach is intended to encourage firms to operate more efficiently by allowing them to keep some of the profits resulting from cost reductions, provided their prices do not exceed certain "caps" established by the regulatory agency.

CWS also states that the various regulatory reforms, including streamlined filing procedures and reduced oversight requirements, that the Commission has extended to other U.S. common carriers, such as AT&T and the local exchange carriers ("LECs"), have yet to be applied to CWS, even though it has less market power than either AT&T or the LECs. CWS notes that in 1985, the Commission decided not to exempt the space segment services, which include switched-voice services, from full Title II regulation^{3/} for two reasons: fiber optic cable technology had not yet been fully deployed, thereby precluding intermodal competition from carriers that could provide the same services without the use of satellites; and the Commission's circuit loading policy assured that carriers would route a substantial amount of traffic over satellite facilities.^{4/} CWS asserts that neither of these factors is applicable any longer and that all its satellite-based services are now subject to extensive competition.

NTIA's Support for "Price Caps": NTIA has long been a proponent of "price caps" for rate-regulated carriers, such as

3/ The Communications Act of 1934, as amended, 47 U.S.C. §§ 201-226 (1989).

4/ CWS cites International Carrier Policies, CC Docket No. 85-107, 102 FCC 2d 812, 838 (1985), recon. denied FCC 86-339 (Aug. 7, 1986). In 1988, the Commission eliminated the regulatory requirement that carriers route a certain amount of traffic over satellite facilities. See Policy for the Distribution of United States International Carrier Circuits Among Available Facilities During the Post-1988 Period, 3 FCC Rcd 2156, 2160-62 (1988) ("Circuit Distribution Order").

AT&T and the LECs.^{5/} Our support for such regulation has been based upon our belief that this alternative to traditional rate-of-return regulation provides carriers with incentives to operate more efficiently. Given the public interest potentially served by also applying "price caps" under the CWS proposal, NTIA urges the Commission to initiate a rulemaking to determine whether "price caps" would be the appropriate regulatory mechanism not only for CWS switched-voice services, but other CWS jurisdictional services as well.^{6/}

II. DISCUSSION

NTIA Supports the Initiation of a Rulemaking for All CWS Jurisdictional Services: The majority of parties filing comments in this proceeding, including various members of the Congress,

5/ See e.g., Reply Comments of the National Telecommunications and Information Administration, CC Docket No. 90-132, Competition in the Interstate Interexchange Marketplace (filed Sept. 18, 1990); and Comments of the National Telecommunications and Information Administration, CC Docket No. 87-313, Policy and Rules Concerning Rates for Dominant Carriers (filed July 26, 1988). See also National Telecommunications and Information Administration, U.S. Dep't of Commerce, Pub. No. 87-222, NTIA Regulatory Alternatives Report (July 1987).

6/ The term "jurisdictional services" refers generally to those services COMSAT is uniquely authorized to provide pursuant to the Communications Satellite Act of 1962, as amended, 47 U.S.C. §§ 701-757 (1989). For example, the provision of "basic" INTELSAT satellite capacity by CWS is a jurisdictional activity. Such jurisdictional services are subject to full rate-of-return regulation under the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-226 (1989).

support CWS's Petition for the Commission to initiate a rulemaking and to consider "price caps" regulation for CWS's switched-voice services.^{7/} Moreover, only four commenters specifically oppose CWS's proposed plan, two of whom would nonetheless support a comprehensive review of all jurisdictional services.^{8/} NTIA agrees that the Commission should initiate a rulemaking to examine whether "price caps" regulation should be considered for all CWS jurisdictional services at this time.^{9/}

NTIA believes that "price caps" regulation provides a rational approach for removing obstacles to the efficient functioning of the market, while guarding against potential anticompetitive behavior. "Price caps" regulation has the virtue of simplicity and reduces the direct costs of regulation. Moreover, "price caps" regulation permits a greater degree of pricing flexibility in response to marketplace factors and encourages regulated firms to improve the efficiency of their operations. Such regulation also can discourage improper cross-

7/ See, e.g., Comments of AT&T at 2; Comments of Capital Cities/ABC, CBS, Inc., National Broadcasting, Inc., and Turner Broadcasting System, Inc. ("Networks"), filing joint comments; Sprint Communications Company L.P. ("Sprint"), and GTE Hawaiian Telephone Company.

8/ See Opposition of Pan American Satellite at 11; and Comments of Aeronautical Radio, Inc. at 9.

9/ There are other regulated COMSAT services the Commission may want to examine as well, such as COMSAT Mobile Communications services. However, because there are already well-established rules separating these services from CWS services, and because they serve very different markets, the Commission need not examine them in the same proceeding.

subsidization, while allowing investment decisions to be based more on marketplace factors than on threats of regulatory disallowance of proposed rate-base components. The benefits should include lower rates for consumers, more innovation in service offerings, and more efficient infrastructure investment. For these reasons, NTIA believes that the Commission should initiate a rulemaking to examine the benefits of applying this particular regulatory mechanism to CWS switched-voice services, as well as other CWS jurisdictional services.

The Commission can also examine the conditions in the marketplace and determine independently whether they now warrant different regulatory treatment, as argued in the Petition.^{10/} It has been many years since the Commission last examined COMSAT's structure and operations to evaluate needed regulatory oversight, including cost-allocation measures.^{11/} In the context

^{10/} We note, however, that the case for "price caps" does not necessarily rest on the assumption that the affected services are subject to extensive competition. For example, NTIA recommended, and the Commission concluded, that "price caps" should be applied to the LECs, which clearly have market power with respect to many of their services. Letter from Janice Obuchowski, National Telecommunications and Information Administration to Chairman Alfred C. Sikes, Federal Communications Commission, CC Docket No. 87-313 (May 7, 1990); Policy and Rules Concerning Rates for Dominant Carriers, 5 FCC Rcd 6786 (1990), recon. denied 6 FCC Rcd 2637 (1991).

^{11/} See Changes in the Corporate Structure and Operations of the Communications Satellite Corporation, CC Docket No. 80-634, FCC 85-178, 50 Fed. Reg. 18304 (released Apr. 19, 1985). This Report and Order outlined revisions to COMSAT's filing requirements covering the cost allocation activities of CWS. Moreover, it has been seven years since the Commission considered whether COMSAT was dominant with respect to the specific jurisdictional services it offered at that time. International Carrier Policies, 102 FCC 2d at 838 (1985).

of a broader proceeding, the Commission would be in a better position to more fully evaluate the commenters' concerns regarding the potential for cross-subsidization of more competitive CWS services with revenues from those subject to little or no competition.^{12/} Subjecting all such services to "price caps," with separate "baskets" for services subject to differing degrees of competition (which is basically the approach taken for AT&T and the LECs), may be more desirable than converting some CWS services to "price caps" while others remain subject to rate-of-return regulation.

Further, should the Commission decide that "price caps" regulation is appropriate with respect to some or all of CWS's jurisdictional services, it will have an opportunity to establish the specific terms that would be applicable to those services. With respect to the specific rates that should be applied under "price caps," the Commission will be able to evaluate CWS's proposed rate caps, as well as other possible alternatives. Several commenters suggest rate structures that they believe would ensure CWS customers just and reasonable rates under any ensuing "price caps" plan. For example, for CWS's switched-voice services, AT&T suggests that the Commission adopt particular target prices based on today's competitive prices.^{13/} Sprint suggests that the Commission identify exogenous costs and consider the need for both a productivity factor and a consumer

^{12/} See, e.g., Comments of the Networks at 8.

^{13/} Comments of AT&T at 3.

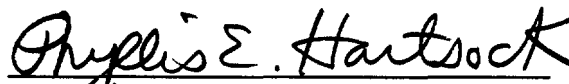
dividend.^{14/} These and other issues or concerns raised by the parties should be more fully explored in the context of a rulemaking proceeding.

III. CONCLUSION


NTIA urges the Commission to initiate a rulemaking proceeding to examine whether "price caps" should be applied to all CWS jurisdictional services. NTIA believes such an approach has the potential of reducing regulatory burdens, while promoting operating efficiencies that lead to lower rates and the broad availability of varied and innovative services for consumers.

Respectfully submitted,

Thomas J. Sugrue
Acting Assistant Secretary for
Communications and Information


Phyllis E. Hartsock
Acting Chief Counsel

Jean M. Prewitt
Associate Administrator
Gregg Daffner
Craig Moll
Office of International Affairs


Anne Moebe
Attorney

National Telecommunications
and Information Administration

U.S. Department of Commerce
Room 4713
14th and Constitution Avenue, N.W.
Washington, D.C. 20230
(202) 377-1816

April 21, 1992

I, Cheryl A. Kinsey, do hereby certify that I have this 21st day of April, 1992, mailed by first class United States mail, postage prepaid, copies of the foregoing reply comments to the following:

Alfred C. Sikes
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, D.C. 20554

Sherrie P. Marshall
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, D.C. 20554

Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Ervin S. Duggan
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, D.C. 20554

Francine J. Berry
David P. Condit
Ivars V. Mellups
295 North Maple Avenue
Room 3244J1
Basking Ridge, NJ 07920

Raul R. Rodriguez
Leventhal, Senter & Lerman
2000 K Street, N.W.
Suite 600
Washington, D.C. 20006

Robert S. Koppel
IDB Communications Group, Inc.
Suite 460
15245 Shady Grove Road
Rockville, MD 20850

Leon M. Kestenbaum
Michael B. Fingerhut
1850 M Street, N.W.
Suite 1110
Washington, D.C. 20036

John M. Scorce
Jodi L. Cooper
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Henry Goldberg
Phillip L. Spector
Goldberg & Spector
1229 Nineteenth Street, N.W.
Washington, D.C. 20036

Randolph J. May
Timothy J. Cooney
Sutherland, Asbill & Brennan
1275 Pennsylvania Avenue, NW
Washington, D.C. 20004

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Jack Fields
Cannon House Office Building
Independence Avenue, S.E.
Room 108
Washington, D.C. 20515-4308

Conrad Burns
Senate Dirksen Office Building
Constitution Avenue, N.E.
Room 183
Washington, D.C. 20510-2603

Richard H. Stallings
Longworth House Office Building
Independence Avenue, S.E.
Room 1122
Washington, D.C. 20515-1202

Tom McMillen
Cannon House Office Building
Independence Avenue, S.E.
Room 420
Washington, D.C. 20515-2004

Richard Bryan
Senate Russell Office Building
Constitution Avenue, N.E.
Room 364
Washington, D.C. 20510-2804

Claiborne Pell
Senate Russell Office Building
Constitution Avenue, N.E.
Room 335
Washington, D.C. 20510-3901

Barbara A. Mikulski
Senate Hart Office Building
Constitution Avenue, N.E.
Room 320
Washington, D.C. 20510-2003

Albert Gore, Jr.
Senate Hart Office Building
Constitution Avenue, N.E.
Room 393
Washington, D.C. 20510-4202

John Breaux
Senate Hart Office Building
Constitution Avenue, N.E.
Room 516
Washington, D.C. 20510-1803

John D. Rockefeller IV
Senate Hart Office Building
Constitution Avenue, N.E.
Room 109
Washington, D.C. 20510-4802

Bob Carr
Rayburn House Office Building
Independence Avenue, S.W.
Room 2439
Washington, D.C. 20515-2206

Dennis E. Eckart
Longworth House Office Building
Independence Avenue, S.E.
Room 1111
Washington, D.C. 20515-3511

Jim Bacchus
Cannon House Office Building
Independence Avenue, S.E.
Room 431
Washington, D.C. 20515-0911

Constance A. Morella
Longworth House Office Building
Independence Avenue, S.E.
Room 1024
Washington, D.C. 20515-2008

April 21, 1992

Cheryl A. Kinsey
Cheryl A. Kinsey